CANADA

National Energy Board

Reasons for Decision

Interprovincial Pipe Line Inc.

OH-4-96

April 1997

Facilities

National Energy Board

Reasons for Decision

In the Matter of

Interprovincial Pipe Line Inc.

Application dated 15 November 1996, for the Construction of Additional Facilities and Reactivation of Existing Facilities

OH-4-96

April 1997

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Abbreviations and Definitions

Act	*National Energy Board Act*
Bercha	F.G. Bercha and Associates (Alberta) Limited
Bercha Report	comparative risk analysis report prepared by F.G. Bercha and Associates (Alberta) Limited
Board, NEB	National Energy Board
BOVAR	BOVAR Environmental
BOVAR Report	independent review of Bercha Report prepared by BOVAR Environmental
bpd	barrels per day
CEAA	*Canadian Environmental Assessment Act*
CSA	Canadian Standards Association
CSA Z662	CSA Standard Z662-94 Oil and Gas Pipeline Systems
EPN	Early Public Notification
ERP	emergency response plan
ESP	Ecological Services for Planning Ltd.
GH-4-93	Hearing Order GH-4-93 in respect of InterCoastal Pipe Line Inc.'s application to convert Line 8 to natural gas service
Guidelines	*Guidelines for Filing Requirements* dated 22 February 1995
ILI	in-line inspection
Imperial	Imperial Oil, a partnership of Imperial Oil Limited and McColl-Frontenac Petroleum Inc.
IPL, Applicant	Interprovincial Pipe Line Inc.
km	kilometre(s)
KP	kilometre post
kPa	kiloPascals
Lambton	Lambton County Board of Education

m	metre(s)
m^3	cubic metres
m^3/d	cubic metres per day
mm	millimetre(s)
MOP	maximum operating pressure
MSD	material safety data
NPS	nominal pipe size
OD	outside diameter
OPLA	Ontario Pipeline Landowners Association
OPR	*Onshore Pipeline Regulations*
OPTS	Oil Products Transportation System
Pipetronix	Pipetronix Ltd.
psi	pounds per square inch
SCADA	supervisory control and data acquisition
SCC	stress corrosion cracking
SCC Inquiry Report	Report of the Inquiry, Stress Corrosion Cracking on Canadian Oil and Gas Pipelines, National Energy Board November 1996
SMYS	specified minimum yield stress
WT	wall thickness

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder; and

IN THE MATTER OF an application dated 15 November 1996 by Interprovincial Pipe Line Inc. pursuant to section 58 of the *National Energy Board Act* for certain facilities and pursuant to section 54 of the *Onshore Pipeline Regulations* to reactivate a portion of Line 8 of its oil pipeline; and

IN THE MATTER OF Hearing Order OH-4-96,

HEARD in London, Ontario on 27, 28, 29 and 31 January 1997,

BEFORE:

J.A. Snider	Presiding Member
R. Priddle	Member
R. Illing	Member

APPEARANCES:

G.M. Nettleton R.A. Neufeld	Interprovincial Pipe Line Inc.
P.G. Vogel D.G. Giles S. O'Neil M. Vance	Ontario Pipeline Landowners Association
D. Hunter G. Brown	Imperial Oil
R.J. Cowell	Sun-Canadian Pipe Line Company Limited
J. Turchin	Ministry of Environment and Energy for the Province of Ontario
M. Hobin	Township of Adelaide
C. Bloomfield	Township of Lobo
P. McBirnie	Township of West Nissouri
M. Snowsell	Upper Thames River Conservation Authority
M. A. Fowke	Board Counsel

Overview

(Note: this summary is provided for the convenience of the reader and does not constitute part of these Reasons for Decisions, to which readers are referred for details.)

In an application dated 15 November 1996, Interprovincial Pipe Line Inc. ("IPL") applied pursuant to section 58 of the *National Energy Board Act* ("the Act") for the construction of the Line 8 Oil Products Transportation System ("OPTS") facilities and pursuant to section 54 of the *Onshore Pipeline Regulations* ("OPR") for an Order approving the reactivation of a portion of IPL's Line 8.

The hearing was convened in London, Ontario, on 27, 28, 29 and 31 January 1997.

IPL's application was supported during the hearing by Imperial Oil Limited. Intervenors who participated in the hearing were the Ontario Pipeline Landowners Association ("OPLA"), the Township of Adelaide, the Township of Lobo, the Township of West Nissouri and the Upper Thames River Conservation Authority.

The Board has considered the Environmental Screening Report and the comments received on the report and is of the view that, taking into account the implementation of the proposed mitigative measures and the conditions set out in the Screening Report, the construction and installation of the Line 8 OPTS facilities are not likely to cause significant adverse environmental effects. This represents a decision pursuant to paragraph 20(1)(a) of the *Canadian Environmental Assessment Act*.

At issue in the hearing was whether IPL has the right, under the existing easement agreements to transport refined products and whether the agreements should contain certain provisions required by the Act. IPL argued that the *Pipe Lines Act* is the appropriate legislation to use to interpret the agreement and that the definition of "oil" in this legislation is broad enough to allow for the transportation of the products which are the subject of the application. It further argued that it would be retroactively applying the Act to require the easement agreements, signed before the Act was in force, to contain provisions now required in new land acquisition agreements. OPLA argued that the *National Energy Board Act* should be the legislation used to interpret the agreements. Given this, and the fact that the products proposed to be shipped have not been designated as oil products pursuant to section 130 of the Act, OPLA was of the view that IPL did not have the authority to transport these products. Further OPLA was of the view that it would not be retroactive to require the easement Agreements to contain the elements prescribed in section 86 of the Act. The Board found that applying the Act to these arguments would contravene the rule against the retroactive application of legislation, that the easement agreements allowed for the transportation of the refined products proposed to be shipped, and that section 86 does not apply to these agreements.

The intervenors expressed concerns regarding the structural integrity of the existing pipeline and the consequences of a spill. The hydrostatic test confirmed the structural integrity of that section of Line 8 to be reactivated. However, IPL must satisfy the Board that its SCC Management Program will fully address the ongoing concern with stress corrosion cracking.

The risk assessment information filed by IPL was examined during the proceedings and indicated that the comparative risk did not increase significantly. However, emergency responders should be made aware of the proposed Line 8 OPTS products and facilities. IPL must revise its Emergency Response Plan prior to the in-service date of the Line 8 OPTS.

The Board approves IPL's application construction and installation of the Line 8 OPTS facilities. Accordingly, the Board has issued Order XO-J1-7-97, as shown in Appendix I of these Reasons for Decision.

The Board, pursuant to subsection 54(2) of the OPR, approves IPL's application for the reactivation of the first 210 km of the existing Line 8 from Sarnia Terminal to Millgrove Junction for the purpose of transporting oil.

Chapter 1

Facilities

1.1 The Application

Interprovincial Pipe Line Inc. ("IPL" or "Applicant") filed an application with the National Energy Board ("Board" or "NEB"), dated 15 November 1996, for the Line 8 Oil Products Transportation System ("OPTS"). IPL's application was made pursuant to:

(a) section 58 of the *National Energy Board Act*[1] ("Act") for an Order authorizing the construction of pipeline facilities and the exemption of the facilities from the provisions of sections 30, 31, 33 and 47 of the Act; and

(b) section 54 of the *Onshore Pipeline Regulations*[2] ("OPR") for an Order approving the reactivation of a portion of IPL Line 8.

IPL's Line 8 comprises 225 km (140 miles) of 508 mm (20 inch) outside diameter ("OD") crude oil pipeline extending from IPL's Sarnia Terminal, in the City of Sarnia, Ontario, to Bronte Junction, in the Town of Oakville, Ontario. Line 8 is part of IPL's Older System operations. The pipeline was constructed between 1967 and 1973 as loops were added to the adjacent 508 mm (20 inch) OD Line 7. When the looping was completed in 1973, the pipeline was designated as Line 8 and was in service for the transportation of crude oil until the fall of 1994. Pursuant to Board Order MO-J1-24-95 dated 22 November 1995, IPL deactivated its Line 8 facilities.

Effective 2 October 1995, IPL entered into a Financial Support and Service Agreement with Imperial Oil, a partnership of Imperial Oil Limited and McColl-Frontenac Petroleum Inc., ("Imperial") to transport oil products on Line 8. IPL proposes to reactivate the first 210 km (130 miles) of Line 8 for this purpose.

The Line 8 OPTS would receive oil products in discrete batches at IPL's Sarnia Terminal and deliver at a point along IPL's right-of-way known as Millgrove Junction. The oil products proposed for transportation are gasoline, diesel fuel, aviation fuel, kerosene, stove oil and furnace oil.

The Line 8 OPTS would have a design capacity of 14 800 m^3/d (93,000 bpd). Imperial forecast pipeline movements to average 10 000 m^3/d (63,000 bpd) over the next ten years.

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[1] R.S.C. 1985, c. N-7.

[2] SOR 89-303.

1.2 Pipe Replacements

In its application, IPL identified five locations where the presence of flanges and unused branch connections on the existing Line 8 pipeline could cause integrity problems in the future. The affected sections of pipe will be removed and replaced with new pipe, as described in Table 1-1. IPL stated that samples of the Line 8 pipe required for metallurgical testing were cut from the pipeline in a number of locations. Nominal pipe size ("NPS") 6 flanges remain attached to the pipeline at each of those sample points. The replacement pipe would be 508 mm OD x 7.9 mm wall thickness ("WT") Grade 414 Category II line pipe coated with fusion bonded epoxy. The existing pipe at all proposed replacement locations is 508 mm OD x 7.1 mm WT Grade 359 Category I coated with polyethylene tape.

Table 1-1. Proposed Line 8 Pipe Replacements

Location	Length (m)	Purpose
KP 2842.67	100	NPS 6 flange removal
KP 2886.33	2	NPS 6 flange removal
KP 2923.50	2	NPS 6 flange removal
KP 2939.06	12	NPS 6 flange removal
KP 2903.03 (Bryanston Station)	80	Eliminate unused branch connections

1.3 New Facilities

IPL proposes to install additional facilities including isolation valves, pressure control valves, a new scraper trap receiving facility, leak detection flow meters, batch interface detectors and supervisory control and data acquisition ("SCADA") components. The new facilities are listed in Table 1-2.

Table 1-2. New Facilities to be Installed on Line 8

Location	Description
KP 2804.59 Sarnia Terminal	Isolation valve Pressure control valve Leak detection system flow meter SCADA
KP 3009.92	Batch interface detector SCADA
KP 3014.53 Millgrove Junction	Isolation valves Scraper trap receiving facility Leak detection system flow meter SCADA
Sarnia Control Centre	Line 8 Computational Pipeline Monitoring system (leak detection system)

IPL indicated that, given the fact there would be only one shipper, there would be no need for additional pumping capacity nor storage tankage. IPL would reconsider the requirement for additional pumps and storage tankage if other shippers expressed interest in the Line 8 OPTS.

Views of the Board

The line pipe replacements and additional facilities are appropriate for the purposes of the proposed service and the designs for the foregoing facilities are safe. Construction and commissioning will be monitored to ensure that all standards and design requirements are met. Therefore, pursuant to section 58 of the Act, the Board exempts such facilities from the requirements of sections 30, 31, 33 and 47 of the Act.

Chapter 2

Reactivation

2.1 Line 8 Operations

2.1.1 System Operation

IPL proposes to transport oil products in batch mode on Line 8 from the Sarnia Terminal to Millgrove Junction. The operation of the pipeline would be controlled from IPL's Sarnia Control Centre. IPL would receive products from shippers at the Sarnia Terminal at a pressure that would allow the products to be transported to Millgrove Junction without the requirement for additional pumping on Line 8. A pressure control valve, to be installed at the Sarnia Terminal, would isolate Line 8 in the event that the incoming product was being received at a pressure that would exceed the maximum operating pressure ("MOP") of Line 8. In addition, IPL stated that, in the event of communication failure at the Sarnia Control Centre, Line 8 would be shutdown until communication was restored.

IPL further stated that the proposed Line 8 OPTS would be an efficient configuration of its older system and the proposed Line 8 OPTS was preferable to leaving Line 8 deactivated.

The Township of West Nissouri noted during its cross-examination of IPL that the IPL proposal was the safest method of transportation for the oil products.

2.1.2 Proposed Maximum Operating Pressures

IPL stated that, in accordance with section 54 of the *Onshore Pipeline Regulations*, it conducted a hydrostatic test on Line 8 to demonstrate a level of safety equivalent to that provided for under Canadian Standards Association ("CSA") standard Z662-94 ("CSA Z662")[3]. Further, IPL stated that the proposed MOP would not exceed 80 percent of specified minimum yield stress ("SMYS") at any point along Line 8. The proposed MOP for Line 8 are listed in Table 2-1.

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[3]The *Onshore Pipeline Regulations* require pipeline companies to comply with CSA standard Z662-94 Oil and Gas Pipeline Systems (CSA Z662). This standard was developed by committees representing the pipeline industry, product manufacturers and regulatory authorities, including the NEB and provincial regulators.

CSA Z662 describes in detail the technical requirements for pipeline systems, including how they must be designed, what materials may be used, how they may be installed and joined, how pressure tests are to be done, what methods are acceptable to control corrosion, and how the pipeline system is to be operated and maintained.

Table 2-1. Line 8 OPTS Proposed Maximum Operating Pressures

Test Section	Upstream Kilometre Post	Hydrostatic Test Pressure (kPa)	Proposed MOP (kPa)
1	2804.59	10 208	8 166
2	2857.79	9 920	7 936
3	2903.03	9 753	7 802
4	2961.80	9 474	7 579

The Ontario Pipeline Landowners Association ("OPLA") expressed concern with the proposed MOP of Line 8 and suggested that, if the Board approved the reactivation, the MOP should be limited to the historical operating pressure of Line 8, approximately 4150 kPa (600 psi). OPLA also expressed concern that the magnitude of pressure fluctuations on the proposed Line 8 OPTS could affect the structural integrity of the pipeline.

During argument, IPL stated that, due in part to landowner concerns, it took the unusual step of hydrostatically testing Line 8 with at-risk money[4] before obtaining approval to reactivate, rather than waiting until after the approval was granted. IPL was of the view that the results of the hydrostatic test provided evidence that the line could be operated safely at the proposed pressure. IPL acknowledged that pressure fluctuations could have a negative effect on the integrity of a pipeline and stated that its operating practices minimize pressure fluctuations in its pipelines.

2.1.3 Leak Detection System

IPL stated that a leak detection system would be installed on Line 8 in accordance with Annex E of CSA Z662. IPL, in response to a question from the Township of West Nissouri, stated that additional pressure sensors would be of greater value than additional flow meters for improving the accuracy of the leak detection system.

2.1.4 Pipeline Integrity

Many of the intervenors to OH-4-96 were concerned about the integrity of Line 8, in both the short-term and over the duration of pipeline operation. The primary concern was how IPL would manage the integrity of Line 8 to ensure that there are no pipeline failures. The discussion during the hearing focussed on the use of in-line inspection ("ILI") to monitor the condition of the pipeline and the susceptibility of Line 8 to stress corrosion cracking ("SCC").

[4] At-risk money: If the Board denied its application, IPL might not recover the costs of the hydrostatic test from its shipper(s).

In its application, IPL submitted that it is confident of the integrity of Line 8 based on the historical performance of the line and the results of ILI data, investigative excavations and the hydrostatic test. Since construction of Line 8, IPL has regularly maintained the pipeline and implemented an integrity assessment and monitoring program. This program includes, for example, corrosion control, public awareness programs, leak detection systems and right-of-way inspections. IPL stated in its application that historic operating practices and integrity management programs have ensured that IPL has never experienced an in-service failure on the Line 8 facilities to be reactivated. IPL also confirmed in its letter dated 21 January 1997 to the Lambton County Board of Education ("Lambton") that, pursuant to the requirements of the OPR, all integrity-related inspections and follow-up programs have been and will continue to be conducted in accordance with the requirements of CSA Z662.

The results of IPL's in-line inspections for corrosion and deformation on Line 8 were included in its application, as were the results of the affiliated excavations completed to date. The results indicate that external general corrosion on Line 8 is not significant and that internal metal loss has been limited. IPL committed to continued use of ILI to monitor the condition of Line 8. As stated in its letter dated 21 January 1997 to Lambton, IPL will use reasonable efforts to use high definition geometry and high resolution metal loss ILI tools on Line 8 within eight months of reactivation. This commitment is subject to tool availability and other limitations (e.g. road bans) but shall, in any event, occur within one year after reactivation. Following this, IPL will continue with periodic ILI runs within a three- to nine-year interval.

In final argument, the Township of West Nissouri requested that the Board impose a condition that, if the high resolution ILI tool is not operating in Line 8 within one year of reactivation, IPL conduct another hydrotest.

Stress Corrosion Cracking

In May 1995, IPL retained Ecological Services for Planning Ltd. ("ESP") to develop a SCC landscape model for the Line 8 right-of-way between Sarnia and Millgrove Junction. The model identified 121 locations along Line 8 that exhibited the soil, drainage and topographical conditions which are known to contribute to SCC susceptibility on polyethylene tape coated pipelines. IPL emphasized that the presence of these terrain conditions along a pipeline system only indicates that the environmental conditions may exist for SCC to develop not that SCC exists.

Prior to developing the landscape model, IPL also carried out four other SCC inspections, which were performed in conjunction with corrosion excavations on Line 8. No SCC was found at these locations. Based on the model results, aerial reconnaissance and ILI data for corrosion, five representative investigative excavations were conducted in 1995 and 1996. As discussed in the hearing, IPL's main aim at that point was to locate the potentially most severe SCC and to acquire an indication of the

actual condition of the pipeline. IPL stated that minor SCC[5] was found at two of the five excavation sites.

From the results of these investigations, IPL concluded that Line 8 is susceptible to the initiation of SCC but, because the maximum SCC indications found were very minor, the structural strength of the pipe was not compromised. In addition, the results of the September 1996 hydrotest confirmed that the pipeline did not have any near-critical SCC which could cause a failure during operation.

During the hearing, OPLA submitted that IPL's SCC landscape model did not incorporate the fact that much of the land along the Line 8 right-of-way is being systematically drained with tiles. IPL responded by inviting OPLA to provide IPL with any ideas that OPLA's members might have which could help to improve the landscape model. IPL, in turn, would present OPLA's information to the Canadian Energy Pipeline Association Working Group. In final argument, OPLA reiterated its concerns by requesting that IPL initiate an intensive investigative dig program, particularly in clays, as a condition of approval for the application.

OPLA also expessed concern that the type and condition of the pipe coating may increase the susceptibility of Line 8 to SCC. IPL acknowledged OPLA's concern and indicated that, while there has been some coating disbondment on the line, ILI corrosion indications have been quite low. Therefore, IPL considers that the performance of the coating to date has been relatively good. This led to a discussion of IPL's pipeline monitoring and integrity management programs, particularly with respect to SCC.

With respect to monitoring, currently there is no SCC or crack detection ILI tool available to operate in a 508 mm (20 inch) diameter pipeline. However, IPL is in discussion with Pipetronix Ltd. ("Pipetronix") which is actively developing crack detection tools for larger diameter pipelines. IPL is confident that Pipetronix has the capability to reduce the size of their existing tools to 508 mm (20 inches) and that such tools will be able to provide excellent information on Line 8. As stated in IPL's letter dated 21 January 1997 to Lambton, the company will use reasonable efforts to inspect Line 8 with a crack detection tool before 31 December 1999 or, in any event, within two years after a tool capable of inspecting Line 8 becomes commercially available. IPL's anticipated date of 31 December 1999 is based on discussions with Pipetronix.

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[5] IPL submitted that the SCC found on Line 8 would be classified as insignificant as defined by the Board's Report of the Inquiry, Stress Corrosion Cracking on Canadian Oil and Gas Pipelines.

In order to be able to provide a consistent measure of the severity of SCC when it is found, TransCanada developed a set of definitions, or criteria, which classify the severity of SCC colonies as either "significant" or "insignificant". These definitions take into account the colony's length and depth and the pipe's geometric and mechanical properties. A colony is "significant" if the deepest crack is greater than 10 percent of the pipe wall thickness and the total length of the colony exceeds a crack length that will likely fail under a pressure test at 110 per cent of the pipe's SMYS . SCC colonies that do not meet the "significant" criterion are classified as structurally "insignificant" .

It should be noted that SCC colonies that are classified as "significant" are not necessarily an immediate threat to the integrity of the pipeline. The criterion is deliberately conservative so that the pipeline company has adequate time to plan and implement remedial action before a crack grows to a critical size.

To properly evaluate the severity of an SCC colony, its depth and length must be accurately determined. These dimensions are then compared to a critical crack size calculated for that segment of pipe to assess if the pipe's integrity is threatened.

IPL submitted that it has had an SCC Management Program in place for some time. Among other things, this program includes all ILI data, the landscape model, investigative digs, the results of the hydrostatic test and an analysis of crack growth rates. OPLA, the Township of West Nissouri and the Board questioned IPL during the hearing on the specifics of its SCC Management Program. IPL indicated that, based on the information gathered to date, it has no plans to hydrostatically retest Line 8 or perform investigative excavations specifically for SCC inspection. As a minimum, IPL will continue to inspect for SCC during excavations for other purposes. However, IPL did acknowledge that its mitigative plans may change in the future as more information is obtained (e.g. additional ILI data or a change in the availability of the crack detection tool). These plans and further details will be discussed in IPL's SCC Management Program, which IPL will be filing with the Board by 30 June 1997 pursuant to the Board's Report of the Inquiry, Stress Corrosion Cracking on Canadian Oil and Gas Pipelines ("SCC Inquiry Report").

Views of the Board

Intervenors requested that the MOP of Line 8 should be set at a much lower level than that applied for by IPL. The Board, in taking its decision, must be satisfied that the proposed design and operation of pipeline facilities is appropriate for the intended purpose and does not compromise public safety. The Board uses the applicable CSA standards and other industry standards as guidelines during its evaluation process. Within those parameters, the detailed design of the pipeline, including importantly the leak detection system and location of pumping facilities, is a technical decision best left to IPL.

IPL has acknowledged that pressure fluctuations during operation can affect the structural integrity of the pipeline. However, IPL's proposed operating practices will mitigate the effects of pressure fluctuations.

The Board acknowledges and shares the concerns of the intervenors with respect to pipeline integrity. With respect to SCC in particular, many of the concerns identified by the intervenors were also identified by the Board in its recent SCC Inquiry Report.

Based on the evidence provided, general corrosion is not significant on Line 8 and, given IPL's commitment to continue monitoring for general corrosion, the condition of the pipe coating is satisfactory.

The Board is concerned about the susceptibility of Line 8 to SCC and acknowledges that any SCC existing on the pipeline today may continue to grow with time. However, the results of the recent hydrostatic test confirm that no near-critical SCC exists on the pipeline today that could cause an in-service failure in the near to mid-term future. In addition, the Board is satisfied that the operation and maintenance practices of IPL will address the ongoing integrity of the pipeline.

There was some confusion regarding the purpose and role of the different ILI technologies discussed during the course of the Hearing. The high resolution ILI tool is a general corrosion tool that uses proven technology and is commercially available. IPL made a commitment to use such a tool, during the first year of Line 8 OPTS operation, to investigate for general corrosion on Line 8. An ILI tool capable of.

consistently and reliably detecting SCC is still under development and is not yet commercially available for use in 508 mm (20 inch) pipelines. IPL has indicated that a crack detection ILI tool should be available before 31 December 1999.

Concerns were raised by OPLA in requesting additional investigative excavations for SCC. However, given its efforts and commitments to date, IPL is adequately monitoring and managing the risks posed by SCC on Line 8. Accordingly, the Board does not presently require IPL to perform additional mitigative measures.

IPL's current and future plans for ensuring the integrity of Line 8 with respect to SCC will be fully addressed in its overall SCC Management Program to be filed with the Board later this year. IPL's program is expected to specifically address the company's plans for managing SCC on Line 8 until the crack detection tool becomes available and, conversely, its mitigation plans if a crack detection tool is not available within the anticipated timeframe.

IPL's decision to hydrostatically test Line 8 prior to its application was an unusual one. The normal industry practice is to obtain Board approval for the reactivation of a pipeline prior to undertaking the expense of a hydrostatic test.

A successful hydrostatic test is the accepted method of demonstrating the structural integrity of a pipeline. Clause 8 of CSA Z662 covers the requirements for pressure testing of piping. The hydrostatic test pressure must be at least 125 percent of the intended MOP of the pipeline. CSA Z662 specifies the minimum strength test pressure in order to ensure that all pipe with near-critical and critical defects are caused to fail. Near-critical and critical defects are defined as defects that could potentially fail at the MOP of the pipeline.

The Line 8 OPTS is an effective use of IPL's resources and construction of a new pipeline to transport the Line 8 OPTS commodities would entail a significant impact upon landowners. The use of alternative transportation arrangements or construction of a new pipeline for the oil products would not serve the overall public interest as well as would the Line 8 OPTS.

The Board, pursuant to subsection 54(2) of the *Onshore Pipeline Regulations*, approves IPL's request to reactivate 210 km (130 miles) of Line 8 from Sarnia Terminal to Millgrove Junction for the transportation of oil. The Board authorizes the maximum operating pressures listed in Table 2-1 of these Reasons for Decision. This authorization is consistent with the authorizations for maximum operating pressures on other pipelines regulated by the Board.

2.2 Public Safety

2.2.1 Risk Assessment

IPL submitted a qualitative risk assessment, prepared by F.G. Bercha and Associates ("Bercha"), to assess the relative public risks between previous Line 8 operations and those proposed for the Line 8

OPTS. IPL indicated that the comparative risk analysis ("Bercha Report") was carried out using the National Standards of Canada Risk Analysis Requirements and Guidelines, CAN/CSA-Q634-91, as a guideline. IPL submitted that the Bercha Report demonstrated that there is no appreciable difference in public risk between Line 8 operations in the previous crude service and the proposed oil products service. IPL stated that the scope of the Bercha Report was intended to address concerns expressed by Lambton during meetings with IPL.

During the course of the proceeding, parties became aware that IPL had made arrangements for BOVAR Environmental ("BOVAR") to prepare, on behalf of Lambton, an independent review ("BOVAR Report") of the Bercha Report. The BOVAR Report was produced to resolve the safety concerns expressed by Lambton with respect to the Line 8 OPTS and its impact and effect upon the Confederation Elementary School. IPL indicated to the Board that Lambton would not take an active part in the Line 8 proceeding and would not file any evidence. IPL also stated that Lambton consented to the BOVAR Report being filed by IPL, so as to comply with the Board's direction to IPL in that regard. The BOVAR Report reviewed the approach, assumptions and conclusions contained in the Bercha Report, estimated the risk at the Confederation Elementary School and recommended risk control measures that IPL could implement to mitigate the risk at the Confederation Elementary School.

The estimated incremental individual risk due to the previous and proposed operations for Line 8, as calculated by Bercha and BOVAR, are presented in Table 2-2.

Table 2-2. Estimated Individual Risk

Reference Report	Line 8 Estimated Individual Risk (Annual Fatality Rate per Million)	
	Previous Operation	Proposed Operation
Bercha	0.2	0.4
BOVAR	0.3	1.0

OPLA, the Township of West Nissouri and the Upper Thames River Conservation Authority expressed concern that the Line 8 risk assessment did not address environmental risks arising from possible contamination of groundwater and other natural resources. OPLA argued that, as a condition of approval, IPL should be directed to submit a more comprehensive risk assessment.

2.2.2 Emergency Response

Pursuant to paragraph 48(1)(l) of the OPR, IPL's Emergency Response Plan ("ERP") is currently on file with the Board. The ERP is divided into three parts, although it functions as an integrated document. Part I contains general information on the company's emergency procedures, including general containment, recovery and clean-up guidelines for oil spills. Part II contains reference information specific to each region or district, identifying notification procedures, available equipment,

area maps, control points and other information required during emergency operations. Each region or district issues its own area-specific plan. Part III consists of the Emergency Response Directory. The Emergency Response Directory provides specific contact information, telephone numbers, incident checklists and other information vital to an effective emergency response. The Directory is presented as a booklet and is more widely distributed than Parts I and II. Each region in IPL has an Emergency Response Directory containing region-specific information.

The Board has completed an assessment of the environmental aspects of IPL's ERP. It should be noted, however, that the ERP currently on file with the Board addresses the previous operations of Line 8, not the proposed change in service for the line. IPL submitted that it would be modifying its ERP, including a review of the sensitivity maps, to reflect changes in the operation of Line 8 and that copies of the revised ERP would be filed with the Ontario Spills Action Centre and the Board upon approval of the application.

2.2.2.1 Consultation with Emergency Responders and Other Affected Parties

During the hearing, OPLA expressed its concern that emergency responders and landowners along Line 8 may not be adequately prepared to deal with pipeline emergencies. In particular, OPLA questioned IPL on whether the company has conducted presentations with local fire departments which, in most rural areas, consist primarily of volunteers. IPL submitted that the company has held presentations in the past but has not conducted formal presentations in all areas. However, as a minimum, IPL attempts to visit police and fire departments on a regular basis to inform them of the company's facilities. IPL also stated that the company has developed a booklet containing components of its ERP, including emergency telephone numbers and Material Safety Data ("MSD") Sheets. This booklet was recently updated and is still in the process of being circulated to all police and fire departments along the system. IPL also indicated that it will be updating both its ERP and booklet with the MSD Sheets for the new products to be transported in Line 8.

IPL submitted that the company does visit landowners on a regular basis to distribute information and training kits. IPL has conducted drills with local fire and police departments at some of its larger facilities. However, in the rural areas, IPL indicated that it is sometimes hard to coordinate such events with volunteer organizations. The company noted that it is looking to revise and improve its program according to the Board's recommendation.

IPL's letter dated 21 January 1997 to Lambton outlines thirteen of the company's commitments with respect to integrity and awareness programs for the Line 8 OPTS. While several of the commitments apply to Line 8 in general, the intent of the commitments was to address concerns specific to the Confederation Elementary School. For example, IPL has committed to meeting with Lambton and convening open house meetings at the Confederation Elementary School, as Lambton directs, to inform school officials, parents and teachers of IPL's ERP and to allow them the opportunity to provide their comments and suggest modifications. However, in response to questions from the Board during the hearing, IPL committed to expanding such communications activities so that all parties in the area affected by the Line 8 OPTS would have access to similar opportunities.

2.2.2.2 Spill Response

During the hearing, there was much discussion of the possibility of a pipeline leak going undetected for some time and the possibility of the leaking product migrating through the soil. To complicate this

possibility, OPLA submitted that there are areas along the Line 8 right-of-way that have extensive tile drain systems in place. OPLA's concerns were focussed on the leaking product migrating towards water courses or facilities adjacent to the pipeline. For example, explosive vapours from an undetected oil spill could flow through the tile system and enter the home of an unsuspecting landowner. While IPL did confirm that there is a possibility of such a situation occurring, the company stressed that the probability was very remote.

The Board asked IPL if the company had analyzed the topography and other factors (such as drain tile systems) at the sites of special facilities to determine whether a spill might migrate toward those facilities. IPL indicated that it has not gathered such information but it does have control point monitoring on its environmental assessment maps that identifies water points and water courses (i.e. anything that would take material away from the right-of-way). IPL stated that to undertake an analysis of the kind the Board outlined would require extensive field work, primarily because IPL doubts that accurate records of drain tiles exist.

OPLA questioned IPL about its remediation plans for pipeline leaks, particularly in the case of an undetected leak that may have contaminated water supplies. IPL could not provide details of a generic remediation plan for this situation because its approach is site-specific and landowner-specific. IPL did discuss its Spill Site Remediation Process, which the company uses to develop specific remediation plans for any spill, irrespective of size or volume. Under this process, IPL would work with the regulatory agencies and affected landowners to manage the recovery of the leaked product, spill site clean-up and site restoration.

Views of the Board

The public safety hazards used for the qualitative risk assessment were adequate to assess the incremental risk of the proposed Line 8 OPTS operation. The Board recognizes that a leak is possible on Line 8. However, the environmental and health risks associated with such a leak should be adequately addressed by IPL's emergency response practices and procedures.

IPL's ERP is an essential document that outlines the policies and procedures that address emergency preparedness. Residents, local communities and emergency responders along Line 8 must be fully informed about the change in service and the additional facilities being installed. It is the company's responsibility to provide the appropriate information. The Board directs IPL to update its ERP to reflect the change in service and new facilities on Line 8 and to subsequently file such revisions with the Board prior to the in-service date of the Line 8 OPTS.

The two risk assessment reports submitted by IPL presented differences of opinion in the estimation of individual risk. However, the differences between the two reports are not significant and the mitigative measures proposed by IPL are appropriate.

The product weighted hazard distances, as summarized in the BOVAR Report, indicates that the hazard distances associated with leaks and ruptures on Line 8 have increased and they should be specifically addressed in IPL's Emergency Response Plans, as discussed in the following section of these Reasons.

The Board is concerned that emergency responders and local residents may not be adequately prepared for pipeline emergencies. Based on the evidence provided during this proceeding, IPL's consultation with emergency responders has not been adequate to date. The Board directs that, prior to the in-service date of the Line 8 OPTS, IPL demonstrate to the satisfaction of the Board that consultation has occurred with all emergency responders along the Line 8 OPTS.

In addition to emergency responders, any party that may be affected by the Line 8 OPTS should be informed of the change in service of Line 8 and be adequately prepared to respond to a pipeline emergency. The Board directs IPL to advise all affected municipalities, landowners and other residents who may be living in the identified hazard zones of the proposed Line 8 OPTS of the necessary actions to be taken in the event of a pipeline emergency. IPL is further directed to inform the Board of the results of its communication program, upon its completion.

The potential is recognized for a leak to occur on the pipeline. However, the evidence on the record does not indicate that a spill from the proposed Line 8 OPTS has or would contaminate residential or other sensitive water supplies. IPL's emergency response procedures use control point monitoring near currently identified sensitive locations in order to minimize the effects of any spill. In the event of a spill, the Spill Site Remediation Process presented by IPL is an acceptable proposal for spill site remediation. Additionally, IPL made a commitment to work with the regulatory agencies and affected landowners to achieve full restoration of any site affected by a spill from the pipeline. In the event that a future leak was demonstrated to have contaminated residential or other sensitive water supplies, the Board will expect IPL to develop further procedures for dealing with such events.

Chapter 3

Environmental Matters

3.1 Environmental Screening Report

The Board completed an Environmental Screening Report pursuant to the *Canadian Environmental Assessment Act* ("CEAA")[6] and the Board's own regulatory process. The Board circulated the Environmental Screening Report to the applicant, all parties to OH-4-96 and those federal agencies which had volunteered to provide specialist advice.

The Board has considered the Environmental Screening Report and comments received on the report in accordance with OH-4-96 and is of the view that, taking into account the implementation of the proposed mitigative measures and those set out in the attached conditions, IPL's Line 8 OPTS project is not likely to cause significant adverse environmental effects. This represents a decision pursuant to paragraph 20(1)(a) of the CEAA.

The comments received and the Board's views form Appendices I and II, respectively, of the Environmental Screening Report, copies of which are available upon request from the Board's Library.

3.2 Certificate Conditions

The Ontario Ministry of Environment and Energy on behalf of the Ontario Pipeline Coordinating Committee submitted a series of proposed undertakings for environmental protection related to the Line 8 OPTS project. IPL agreed to the undertakings as part of the OH-4-96 proceeding.

[6]S.C. 1992, c.37.

Chapter 4

Other Public Interest Issues

4.1 Early Public Notification

The *Guidelines for Filing Requirements* (the "Guidelines") dated 22 February 1995 require that, prior to filing a facilities application, a proponent implement a public information program which explains the potential environmental and social effects of a project, allows opportunity and time for public comment and responds to relevant concerns. The expectation is that public input at the project design and development stage would be incorporated into the proposed project.

IPL submitted that its Early Public Notification ("EPN") program for the Line 8 OPTS was designed to promote communication between IPL and interested persons. Beginning in August 1995, IPL sent out a series of Information Bulletins to landowners and local elected government officials describing the project; set up a 1-800 number to facilitate questions from landowners; held Open Houses in the area to provide additional information and answer questions; and met with individuals and groups who wanted to discuss specific items.

IPL retained ESP to assess the environmental and socio-economic effects of the Line 8 OPTS. As part of the EPN program, a draft of that assessment was distributed to interested stakeholders for comment prior to the report being finalized.

Public Information Bulletins

Since August 1995, six public Information Bulletins were sent to landowners residing along the IPL right-of-way between IPL's Sarnia Terminal and Millgrove Junction and other relevant interest groups. Information Bulletins were also distributed to all landowners, municipalities and counties, appropriate provincial and federal agencies and other related stakeholders and interest groups, as follows:

- Bulletin 1 (August 1995) described the project, the products to be shipped and the scope of the EPN program, and provided a toll free 1-800 number.

- Bulletin 2 (October 1995) provided an update of the project and solicited any opinions in terms of the format, location and timing of the proposed public Open Houses. An enclosed self-addressed prepaid survey card was attached to allow for comment on the Open House options.

- Bulletin 3 (November 1995) provided information regarding the date, time, location and format of Open Houses and a summary of some of the issues raised to date.

- Bulletin 4 (March 1996) summarized stakeholder responses to the Open House process, discussed issues raised and IPL's response, and outlined the regulatory process from that point forward. A self-addressed prepaid survey card was enclosed to solicit interest in tours of IPL facilities and pipeline integrity workshops.

- Bulletin 5 (June 1996) summarized responses received in relation to pipeline workshops and tours, and discussed IPL's plans with respect to hydrostatic testing of Line 8.

- Bulletin 6 (August 1996) summarized IPL's plan for hydrostatic testing of Line 8 including associated issues such as ensuring public safety during testing and treatment of test water prior to discharge.

Newspaper Advertisements

Newspaper advertisements were placed in regional papers beginning the week of 20 November 1995. The advertisements described the proposed Line 8 OPTS project and outlined the schedule for Open Houses.

Open Houses

Six Open Houses were held in close proximity to the Line 8 right-of-way between November and December 1995. Ninety-two people registered at those Open Houses.

Issues

IPL indicated that, through its Line 8 OPTS EPN program, various questions and issues were raised by the public and IPL responded to them. Matters of concern included definition of oil products, landowner liability, operating pressure, safety, construction locations, hydrostatic testing, regulations, construction practices, environmental guidelines, access to construction sites and compensation.

Public Concerns

In its intervention, OPLA, *inter alia*, proposed that a matter be added to the List of Issues with respect to public consultation. Specifically, OPLA set out IPL's failure to comply with the Board's Guidelines for Filing Requirements. OPLA requested that this item be added as an issue in the OH-4-96 proceeding.

On this matter, the Board stated, in its letter dated 24 December 1996, that it was of the opinion that this need not be added to the List of Issues. The Board explained that the information required by the Guidelines is necessary for the Board to determine whether the application should be set down for a hearing. In this case, to the extent that any information was not included, the Board granted IPL relief from the requirements in the Guidelines. The Board noted, however, that this did not change the burden of proof. IPL would still be required to satisfy the Board that this project is in the public interest. Intervenors could argue that this burden has not been discharged by IPL, based on the evidence filed.

In final argument, IPL raised the following three points, stated as follows by its counsel:

> So to set as a goal at the outset that a successful public consultation program is one that avoids a hearing, I suggest, is really a mischaracterization and is one that unnecessarily discounts the value that [the] Board contributes to the resolution of these issues and, in the long term, to the resolution of competing interests among government, industry and public.

> The notion that to be a success a public consultation program must resolve issues short of a hearing is also, I think, a disservice to the public.
>
> The idea that a successful program is one that resolves all issues for all parties is also unfair to industry and, I suggest, ultimately destructive to the concept of requiring public consultation generally.[7]

During final argument, OPLA concurred with IPL that the company had made efforts to improve landowner relations. However, OPLA stated that the concerns of landowners cannot be solved by newsletters, telephone calls and Open Houses that are poorly attended, although the question and answer period to the EPN meetings was a positive step. OPLA also commended IPL for the pipeline workshop in London, Ontario on 18 January 1997.

Turning to the issue of videotaping, OPLA stated that videotaping of EPN meetings should be used as a tool to ensure that the record of such events is available to the Board.

In reply to questions from the Panel in final argument, IPL expressed its concern with placing too much emphasis on what happened at public consultation meetings as set out in OPLA's videotapes. IPL further stated that it would be very concerned if, in the future, videotapes of public meetings were entered into the record of the Board's proceedings. IPL's reasoning is that OPLA ought not to be videotaping deposition or discoveries. IPL stated that a landowner or company should not have to bring lawyers along to public consultation meetings in order to ask the right questions.

Views of the Board

To ensure early, ongoing and full public awareness of proposed pipeline projects, companies are usually required to carry out an early public notification program. The purpose is to inform the public about the nature of a proposed pipeline project, to identify potential adverse effects, and to provide an opportunity for the public to influence the project design. Notification programs can include several activities, such as public meetings, newsletters, personal mail, and personal contacts. The method a company employs to inform the public and obtain feedback usually depends on the size of the project and the significance of potential impacts.

Before commenting on the merits of IPL's EPN program, the Board provides the following views on the use of video tapes during the hearing. Firstly, the videos were accepted into evidence without any objection, although IPL did comment in final argument on the use of such videos in future proceedings. Secondly, upon careful viewing of the videos, the contents of the videos did not add to the Board's overall understanding of the applicant's case and of the position of those opposed to the project. Therefore, the contents of the videos were not considered in any decisions made by the Board. The Board's sole use of the videos was as further evidence that meetings between the Applicant and landowners were held, at which the subject matter of this application was discussed. An underlying current of mistrust on the part of participants is evident from the videos and was reflected when some of them appeared

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[7] OH-4-96 Transcript, p. 629 and 630.

as intervenors during the hearing. It would not be appropriate for the Board to speculate why the mistrust exists; however, the process of rebuilding of trust, which is a difficult task, appears to be the intent of all parties.

OPLA questioned the adequacy of IPL's EPN program. In assessing its adequacy, the Board has asked itself three questions. Did the EPN program result in broad public awareness of the project early in the planning process? In other words, was the project advertised in such a way that interested and affected persons would reasonably be expected to know the nature and the scope of the proposed project at the outset? Secondly, did the public have an opportunity to be informed of the project's potential impacts, to comment on these and to influence the project design to the extent practicable? Finally, were the results of the EPN program fully and accurately placed on the public record?

In considering these questions, the Board believes the success of an EPN program does not hinge on whether all pertinent issues are raised and resolved to everyone's satisfaction. While it is reasonable to expect that through a dialogue process many, if not most, issues can be resolved, there may be issues where disagreement remains. This does not mean that the EPN program is a failure. An EPN program does not and cannot guarantee that all issues will be resolved.

While an EPN program is required for certain types of projects, the Board does not prescribe the design or execution of a particular program. The type of program that is developed and implemented depends on the nature and magnitude of the project, any potential local impacts and feedback from the public on the form of the EPN. It is the responsibility of the proponent to assess these factors and subsequently design and implement an appropriate EPN program. It should be noted that once an application has been filed with the Board, the EPN program is either complete or at an advanced stage.

An EPN program does not preclude further or ongoing public consultation or involvement in the hearing process. Consultation can continue through mutual agreement of those involved. As well, above and beyond the EPN process, the public has the opportunity to participate in the hearing process and to raise, explore and debate unresolved issues. The interested public can obtain intervenor status, submit information requests, give evidence, cross-examine the proponent and present argument.

After consideration of these three questions, the Board concludes that IPL's EPN program was generally satisfactory and was designed to ensure extensive awareness of the proposed project at an early stage in the planning process. The public had ample time and opportunity to understand the proposed project and to raise and resolve issues although some communication methods and fora proved more effective than others. However, through the EPN program, a wide array of issues were raised and subsequently fully and accurately placed on the public record. The matters in contention were clear and were addressed at the hearing. There were no pertinent public issues raised during the hearing process that were not disclosed through IPL's

EPN program. The Board notes that IPL is evaluating ways of enhancing its EPN process from the experience gained with this application

4.2 Insurance

OPLA was concerned about the adequacy of IPL's existing insurance coverage to address cleanup, remediation, soil and groundwater impacts and other consequences of a spill. In OPLA's view, the related issues of insurance, indemnification and landowner liability properly fall within the Board's consideration of the socio-economic effects of the applied-for facilities. Moreover, the adequacy of the indemnification is a relevant consideration, inasmuch as it bears directly upon the financial responsibility of the company.

OPLA stated in final argument that although IPL had offered to allow OPLA President Stuart O'Neil to examine its insurance policy, IPL would not allow the document to be photocopied. OPLA did not accept the invitation, but insisted that an independent insurance inspector of the Board's choice should evaluate IPL's insurance portfolio, ensuring that endorsements and levels of insurance would protect landowners at all times.

OPLA further stated that it is the responsibility of the Board and the Government of Canada to ensure that landowners are fully protected. One of OPLA's conditions of approval of the project was that the Board should determine a process that would address the adequacy of IPL's insurance coverage to fully protect landowners from liabilities forever, and in particular to assess exclusion clauses in such policies.

IPL stated that its policy regarding the adequacy of insurance was that it did not want to be under-insured, in the same way that landowners did not want IPL to be under-insured. IPL said that it spends a great deal of time, energy and resources to make sure that it carries adequate insurance, because it is not in its interest to do anything else. IPL also stated that in the GH-4-93 InterCoastal Pipe Line Inc. and Interprovincial Pipe Line Inc. Decision ("GH-4-93"), the Board found that the types and amounts of insurance carried by a pipeline operator are business decisions properly made by the company. IPL argued that the finding was reasonable and practical, and there was nothing on the record to cause the Board to change its view.

IPL also referred to the Board's finding in GH-4-93 that the particulars of coverage should be shared with interested members of the public. IPL stated that it has done this and it intends to do so in the future. Specifically, IPL stated that it would meet and discuss, on an individual basis or with banks, any issues individuals had regarding its insurance. IPL's only caveat on that was its reluctance to publicly disclose the upper limits of its pollution and comprehensive general liability insurance.

Views of the Board

The Board is cognizant of OPLA's concerns about possible financial liability as a result of potential environmental damage and the adequacy of IPL's insurance to cover these costs. However, IPL has stated that it is also concerned about this matter and spends a great deal of time and resources to ensure that it does have adequate insurance. The coverage and amount of insurance is a business decision best left to IPL and its lenders and insurers. In this case, the Board does not believe it is necessary

to determine the adequacy of IPL's insurance policies or to appoint an insurance inspector to do so. However, it is hoped that IPL's undertaking to allow OPLA to examine its insurance policies and to discuss any issues regarding its insurance will enable concerned landowners to acquire the information and understanding they feel they need in this highly specialized area.

4.3 Easements

In 1956, the Board of Transport Commissioners for Canada, under sections 11 and 12 of the *Pipe Lines Act*,[8] issued Order No. 88980, which granted IPL leave

> to construct a pipe line, consisting of one or more lines of pipe, for the transportation of oil from a point in the vicinity of the City of Sarnia to a point in the vicinity of the Village of Port Credit.

In order to build the subject pipeline, it was necesary for IPL to obtain rights of way from landowners over the route of the pipeline. Accordingly, the Agreements for Right-of-Way and Easement, which are now the subject of interpretation, were signed between IPL and landowners in 1956 and 1957. IPL was defined as

> Interprovincial Pipe Line Company, a Company empowered to construct and operate interprovincial and international pipe lines for the transportation of oil ... hereinafter called "the Grantee".

Pursuant to the agreement, the landowner granted an easement to IPL

> ...for the laying down, construction, operation, maintenance, inspection, alteration, removal, replacement, reconstruction, and/or repair of *one or more pipe lines* together with all the works of the Grantee necessary for its undertaking for the carriage, conveyance, transportation and/or handling of *oil and its products* .... [emphasis added]

In 1957, Line 7 was constructed from Sarnia to Toronto. Between 1967 and 1973 IPL received several approvals from the Board to loop this line. When the looping of Line 7 was completed, the result was a new line: Line 8. The Board approved deactivation of this line in November 1995. With this application IPL seeks approval for the reactivation of Line 8 and for some facilities additions pursuant to section 58 of the Act.

At the time the easement agreements were signed, the *Pipe Lines Act* was in force. The provisions of this legislation which were the subject of discussion in the hearing are set out below.

> 2. (1) In this Act and in any Special Act,
>
> ...
>
> (f) "oil" means any liquid hydrocarbon ....
>
> 7. A company may, for the purposes of its undertaking, subject to the provisions of this Act and the Special Act,

[8] R.S., 1952, c. 211.

...

(*b*) purchase, take and hold of and from any person any land or other property necessary for the construction, maintenance and operation of its line and alienate, sell or dispose of any of its land or property that for any reason has become unnecessary for the purpose of the line;

...

(h) transport oil or gas by company pipe line and regulate the time and manner in which oil or gas shall be transported, and the tolls to be charged therefor; ....

The definition of oil which is found in the *National Energy Board Act*, currently in force, is

"oil" means

(*a*) any hydrocarbon or mixture of hydrocarbons other than gas, or

(*b*) any substance designated as an oil product by regulations made under section 130 ....

At the time that the easements were entered into, there were no legislative requirements with respect to the content of the agreements. However, now, section 86 of the Act requires that certain provisions be included in such agreements. That portion of section 86 referred to in argument provides:

86. (1) Subject to subsection (2), a company may acquire lands for a pipeline under a land acquisition agreement entered into between the company and the owner of the lands or, in the absence of such an agreement, in accordance with this Part.

(2) A company may not acquire lands for a pipeline under a land acquisition agreement unless the agreement includes provision for

...

(*d*) indemnification from all liabilities, damages, claims, suits and actions arising out of the operations of the company other than liabilities, damages, claims, suits and actions resulting from gross negligence or wilful misconduct of the owner of the lands;

(*e*) restricting the use of the lands to the line of pipe or other facility for which the lands are, by the agreement, specified to be required unless the owner of the lands consents to any proposed additional use at the time of the proposed additional use; and ....

The easement agreements which are at issue in this hearing do not contain provision for the issues identified in section 86, specifically paragraphs (d) and (e).

At the request of OPLA, the Board added the issue of the easement agreements and section 86 to the matters to be considered at the hearing and heard argument on

a) Whether IPL can ship refined product through the reactivated line under the terms of the 1957 easement agreement; and

b) Whether section 86 of the Act applies to these agreements.

Should the Board determine that the easement agreements do not apply to the reactivated Line 8, IPL would be required to obtain new rights of way which would have to comply with present regulatory requirements.

IPL, OPLA and Mr. Kozowyk presented argument on these matters.

4.3.1 Adequacy of the Easement Agreements to Transport Oil Products

4.3.1.1 IPL's Position

IPL argued that it has the authority to transport the proposed products under the existing easement agreements. It examined the phrase "oil and its products" in the easement agreements and argued that under any reasonable interpretation this phrase must be broad enough to incorporate the phrase "oil and oil products". It then turned to the question of whether the materials proposed to be transported on Line 8 are either oil or oil products, or both, and stated that there is no doubt that they are. IPL pointed out that the definition in the *Pipe Lines Act* which was in force when the easements were signed was "oil means any liquid hydrocarbons". Since, in IPL's view, all of the products that are proposed to be transported are liquid hydrocarbons, they would fall within the definition of "oil". Even if the grant had only been expressed as "oil", counsel for IPL argued that the company would be on solid ground in relying on the easements.

As support for its argument, IPL relied on *Hay* v. *Coste*[9], where in *obiter* the Ontario Court of Appeal stated that the word "products" is used "in the sense of artificial products or products resulting from manufacture."[10]

It was then noted that when an easement is to be interpreted, one must primarily and firstly look at what the document says. To support this, IPL directed the Board to *Hillside Farms Ltd.* v. *British Columbia Hydro and Power Authority*[11]. In that case, the court denied the argument that the easement was ambiguous and declined to examine a different agreement containing limiting terms in order to interpret the easement.[12] As well, the court stated that it would be permissible to string higher power lines than had previously existed as it would not be unreasonable to expect the type of technology that was being used might change[13]. IPL argued that when an agreement expressly provides for a certain purpose in terms of the easement that has been granted, that easement should be applied according to its plain and simple meaning.

IPL suggested that, if the Board were to determine that it is necessary to go beyond a clear meaning of the easement in this case and examine the conduct of the parties over the past 40 years, it would be

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[9] (1914), 6 O.W.N. 443 (Ont. H.C.); aff'd (1915), 8 O.W.N. 120 (Ont. C.A.).

[10] *Ibid.* at 9 (C.A.).

[11] [1977] 3 W.W.R. 749 (B.C.C.A) ("*Hillside Farms*").

[12] *Ibid.*at 753.

[13] *Ibid.* at 752.

necessary to hold a hearing. Counsel for IPL noted the case of *Figol* v. *Edmonton City Council*[14] wherein the Alberta Court of Appeal questioned whether it was the proper role and mandate of the Development Appeal Board to embark on an examination of the issue of whether a proposed development was prohibited under the terms of a restrictive covenant applying to a parcel of land. Based on this, IPL questioned whether it was necessary or even appropriate for the Board to examine the conduct of the parties and argued that it would entail a long and involved process.

With respect to OPLA's argument that IPL's conduct subsequent to the signing of the agreements indicates the intention of shipping only crude oil, IPL responded that evidence of subsequent conduct can be weighty when two individuals are involved, but when there are interchangeable individuals, for example a corporation where the directing minds of the corporation change, the weight to be given the subsequent conduct is lessened[15].

In reply to OPLA's arguments, IPL stated that the products to be shipped do not need to be designated as oil products under section 130 of the Act as they are already oil under the Act.

4.3.1.2 OPLA's Position

Counsel for OPLA argued that IPL does not have the right under the existing easement agreement to transport the substances which are the subject of the application.

The Board was referred to the authorization which provided IPL leave to construct in 1956, as well as other authorizations granting leave with respect to Line 8 and it was noted that all were for the transportation or transmission of oil.

OPLA referred to the definition of oil under the *Pipe Lines Act* and the expanded definition of oil as well as section 130[16] in the *National Energy Board Act*. Based on the definition of oil in the current Act, counsel for OPLA concluded that the definition of oil is: a hydrocarbon or a designated oil product under section 130. Hydrocarbons, in OPLA's view, are substances such as crude and do not include designated oil products. Section 130 provides that substances resulting from the processing or refining of hydrocarbons may be designated as "oil products". OPLA noted that all of the substances to be transported are the result of the processing or refining of a hydrocarbon and argued that, since none of them have been designated as required under section 130, they are not oil products within the definitions under the Act and are not permissible to be transported under the easement agreements which allow for oil and its products.

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[14] (1969), 71 W.W.R. 321 (Alta. S.C., App. Div.).

[15] *Re Canadian National Railways and Canadian Pacific Ltd.* (1978), 95 D.L.R. (3d) 242 at 262 (B.C.C.A.).

[16] 130. (1) The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect and may, by those regulations, designate as an oil product or as a gas product any substance resulting from the processing or refining of hydrocarbons or coal if that substance

(*a*) is asphalt or a lubricant; or

(*b*) is a suitable source of energy by itself or when it is combined or used in association with something else.

(2) The Governor in Council may by regulation exempt any oil or gas or any kind, quality or class thereof or any area or transaction from the operation of all or any of the provisions of this Act.

OPLA argued that applying the standards in the Act to Line 8 is not retroactively or retrospectively applying legislation as the application before the Board is for the reactivation of Line 8. Given this, the appropriate standard that the Board must apply is the current regulatory standard as found in the Act.

OPLA distinguished *Hillside Farms* as that case was dealing with simply increasing the amount of electricity transported on a hydro line. In the application before the Board the substances to be transported are different in character as it is proposed that processed refined substances would be transported as opposed to hydrocarbon oil.

OPLA argued that the easement agreements are clear and that the products to be transported are not included in "oil and its products", but that, if there is any doubt, the Board is entitled to look at the conduct of the parties subsequent to the agreement to interpret their intention and the meaning that should be given to "oil and its products". As authority for this proposition, OPLA relied on *The Law of Contract in Canada*[17] ("*Fridman*") and the cases cited in that text. OPLA raised the case of *Manitoba Development Corporation* v. *Columbia Forest Products Ltd. and GNC Industries Limited*[18] as standing for the proposition that, in Canada when a contract is capable of two meanings, the court may look to the actions of the parties as the best guide to how the contract was used. It also directed the Board to *Re Canadian National Railways*[19] which, it said, included a clear statement that subsequent conduct may be admitted and be given legal relevance to determine which of two reasonable alternative interpretations of a contract is correct. OPLA pointed out that the subsequent conduct of IPL in relation to the easement agreements was that the whole time that Line 8 was in operation prior to being deactivated, it was transporting crude oil and never the processed or refined products which are the subject of this application. It argued that this subsequent conduct supports an interpretation of the agreement that it does not include the right to transport these processed and refined substances.

Further, if the Board is in doubt as to the interpretation of the agreements, in OPLA's submission, the doubt should be resolved in favour of the landowners against the interests of IPL, as IPL was the author of the agreement. This rule of interpretation, known as *contra proferentem*, is discussed in *Fridman*[20]. Counsel noted the text's statement that this was of great relevance where the contract is a *contrat d'adhesion*, that is, where one party does not have the opportunity to negotiate but must sign or forego the advantages the contract may provide. It was submitted that the agreements to be interpreted are standard form easement agreements which were simply presented to the landowners.

4.3.1.3 Mr. Kozowyk's Position

Mr. Kozowyk argued that, if the leases are not valid, the matter in question is not the reactivation of an existing line as the line is now being proposed for a new and different service as evidenced by the

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[17] Fridman, G.H.L, *The Law of Contract*, 3rd ed. (Scarborough: Carswell, 1994).

[18] [1974] 2 W.W. R. 237 (Man. C.A.).

[19] *Supra*, note 15.

[20] *Supra*, note 17 at 470 - 471.

requirement for obtaining new leases. He argued that the application would have to proceed by way of section 52 which would involve a detailed route hearing after notice to all landowners is provided.

He noted that there is a broad definition of oil in the Act, but, as the leases were signed before that came into force, the important factor in deciding the validity of the leases will be the definitions IPL and the landowners had at the time of signing the leases.

Finally, Mr. Kozowyk argued that the original leases did not allow for "subsequent or additional" pipelines to be installed in the right of way in the future. As Line 8 was installed subsequent to the original Line 7, a new easement should have been required for Line 8.

4.3.2 Compliance with Section 86

4.3.2.1 IPL's Position

IPL noted that the easements in question were entered into in 1956 and 1957 but that the *National Energy Board Act* was not proclaimed until 1959, and more specifically, the provisions of section 86 were made in the mid-1980s. It argued that to interpret the current requirements of section 86 as applying to easements that were granted prior to the enactment of the legislation would constitute a retroactive application of a statutory requirement which would be a clear error of law. To support this argument, IPL relied on *Driedger on the Construction of Statutes*[21] and *Spooner Oils Limited* v. *The Turner Valley Gas Conservation Board*[22], specifically the statement in that case by Chief Justice Duff that:

> The appropriate rule of construction has been formulated and applied many times. A legislative enactment is not to be read as prejudicially affecting accrued rights, or "an existing status", unless the language in which it is expressed requires such a construction.[23]

IPL concluded that there is no reason, nor jurisdiction, for the Board to deny the application on the basis of the easements not conferring the rights to do what is proposed. Further, there is no logical reason to impose any conditions to that same effect, which, in IPL's view, would be the same as denying the application.

4.3.2.2 OPLA's Position

OPLA argued that, pursuant to subsection 86(1) of the Act, IPL cannot exercise the right to transport the substances in its application until it first acquires the right to do so under a land acquisition agreement which complies with the requirements of subsection 86(2) of the Act. It therefore submitted that, since IPL didn't have the necessary rights and had not attempted to acquire them, the application should be dismissed. Alternatively, at a minimum, a condition should be imposed which

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[21] Sullivan, R., *Driedger on the Construction of Statutes,* 3rd ed. by Ruth Sullivan (Markham, Ont: Butterworths, 1994) at 512 ("*Driedger*").

[22] [1933] S.C.R. 629 ("*Spooner*").

[23] *Ibid.* at 638.

would not allow the reactivation to proceed until IPL enters into land acquisitions agreements complying with subsection 86(2).

OPLA argued that the regulatory standard which should be applied is that currently found in the Act given that this is not a situation of continuing operation, but an application for reactivation of the line. Counsel also relied on *Driedger* to support this position and quoted a passage which reads, in part:

> An application is not retroactive unless *all* the relevant facts were past when the provision came into force. In the case of a provision that attaches legal consequences to a continuing fact, such as a relationship or a state of affairs, the provision is not retroactive unless the relationship or state of affairs has ended before the commencement.[24]

Given that there has been an ongoing relationship for 40 years which will continue, OPLA argued that the application of the Act is not retroactive. It submitted that the Board is not being asked to apply a present statutory provision to facts that have been completed in the past. Rather the line was taken out of operation in 1994 and the application before the Board is for reactivation.

In a discussion about compliance with section 86 of the Act, OPLA referred to paragraphs 86(2)(d) and (e) of the Act and paragraphs 7(b) and (h) of the *Pipe Lines Act*.

OPLA pointed to the easement agreement and the authority that IPL had to enter into it and stated that it was clear that the only authorized line use is that which the agreement specified the lands would be required for in 1957, that is, for the transportation of oil, (ie. hydrocarbon oil, as opposed to processed or refined products). Referring to paragraph 7(b) of the *Pipe Lines Act,* OPLA submitted that this indicates IPL's power to take lands for the construction of its lines and therefore, in 1957, IPL could only lawfully obtain land rights which were necessary for the construction and operation of this line. Pursuant to paragraph 7(h), IPL was authorized to transport oil, that is, hydrocarbon oil. OPLA argued that the use of the lands must be restricted to the use the agreement indicated was authorized, that is the transportation of oil. Therefore, applying paragraph 86(2)(e) of the Act to the agreement, landowner consent would be required for the proposed additional use of the line, which consent has not been obtained.

OPLA argued that the distinction between what was transported and what is proposed to be transported is not only a technical distinction based on legislation but is a clear difference in character given the differences in hazard zone for the proposed products as discussed in the Bercha and BOVAR Reports. (Risk assessment is discussed in Section 2.2.2. of this Reasons for Decision).

Finally, OPLA noted that the requirement for indemnification in paragraph 86(2)(d) of the Act is absent from the easement agreement.

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[24] *Supra*, note 21 at 515.

Views of the Board

Adequacy of Easement Agreements

The relationship between IPL and certain of the landowners was first established by easement agreements entered into in and around 1957. The question which the Board has been asked to adjudicate is whether the relationship between these contracting parties, or their successors, will continue pursuant to these easement agreements upon the reactivation of Line 8. Specifically, the Board must decide whether that portion of the *habendum* clause of those agreements which granted to IPL an easement:

> for the laying down, construction, operation, maintenance, inspection, alteration, removal, replacement, reconstruction, and/or repair of *one or more pipe lines* together with all the works of the Grantee necessary for its undertaking for the carriage, conveyance, transportation and/or handling of *oil and its products* .... [emphasis added]

is sufficient to allow IPL to transport the products proposed to be carried upon the reactivation of Line 8. A further question raised is whether the agreement, which was entered into at the time of approval of the originally constructed Line 7, is valid in respect of Line 8, which was completed some 16 years later.

Construction of the agreement turns on the definition of "oil and its products". Is the definition of this phrase from the agreement broad enough to include the refined products such as gasoline, diesel fuel, aviation fuel, kerosene, stove oil, furnace fuel or a mixture of such products or components that IPL proposes to transport on Line 8? Since the term "oil" is not defined in the agreement, parties arguing before the Board turned to the definitions contained in two statutes: the *Pipe Lines Act*, which was in force at the time the agreement was executed; and the *National Energy Board Act*, which is in force at this time. The Board agrees that this is an appropriate place to begin an analysis of this issue. If, after the assistance of statutory definitions, the term remains unclear or ambiguous, the Board may then look for assistance to surrounding circumstances, subsequent conduct of the parties and other tools of interpretation such as the doctrine of *contra proferentum*.

The first issue to be determined is whether the *Pipe Lines Act* or the *National Energy Board Act* applies to the interpretation of the easement agreements. IPL argued the former and OPLA the latter.

The determination of whether the *National Energy Board Act* applies raises two questions: 1) could applying the Act to the easements give the Act retroactive effect; and if so 2) is there a prohibition against applying the Act to the easements retroactively?

At law, there is a presumption against retroactivity. It is presumed that legislation is not intended to have retroactive effect, and any retroactive effect must be minimized.[25]

OPLA argued that this is not retroactive application of legislation as the proceeding is to determine whether IPL should be granted leave to reactivate Line 8 given that it has not been in continuing operation. With respect, the Board disagrees. Although the line has not been in service, this does not mean that the easement agreements at any point ceased to be in effect. Pursuant to subsection 53(2) of the OPR, the Board shall approve the deactivation of a pipeline if "the deactivation provides for a level of safety at least equivalent to the level of safety generally provided for by CSA standards". A company deactivating a line must still maintain the line in the same way as if the line were in operation, which includes providing cathodic protection and right of way surveillance.

OPLA also argued that applying the Act does not give it retroactive effect due to the fact that the relationship between IPL and the landowners had not ended when the Act came into force. In the Board's view, while there is a continuing relationship between IPL and a landowner, the question of the retroactivity of the Act must apply to the date and fact of signing the easement agreement. As is stated in *Driedger*

> the fundamental tenet on which the rule of law is built is that in order to comply with the law, or rely on it in a useful way, the subjects of the law have to know in advance what it is.[26]

As well, the Board finds the fact situation in *Spooner* to be analogous to that before the Board. In that case, Spooner Oils Limited was the holder of a lease from the Dominion Government granted under regulations made in 1910 and 1911 for the purpose of mining and operating for petroleum and natural gas. In 1932 the Province of Alberta passed an act which was intended to reduce the loss of gas in the field by burning it as waste and which subjected the lessee's operations to the control of a Board whose duty it was to limit the production of natural gas. The court found that the legislation, if applied, would affect the lease that was signed prior to the legislation coming into effect and was therefore incompetent in so far as it affected such leases[27].

The Board is therefore of the view that applying provisions of the *National Energy Board Act* to the easement agreement would give the Act retroactive effect.

The question then arises whether there is a prohibition against applying the Act retroactively. It has been clearly stated in numerous authorities[28] that a statute will not

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[25] *Supra*, note 21 at 512.

[26] *Supra*, note 21 at 513.

[27] *Supra*, note 22 at 634.

[28] See for example *Gustavson Drilling (1964) Ltd.* v. *Minister of National Revenue*, [1977] 1 S.C.R. 271 at 279; *Re McMichael et al. and the Queen in right of Ontario*, (1996), 141 D.L.R. 169 at 180.

be construed retroactively unless the wording in the statute requires such an interpretation, either expressly or by necessary implication. There is not such an express statement in the Act and, in the Board's view, no necessary implication to so interpret the legislation.

In the Board's view, the *National Energy Board Act* is not the appropriate legislation to be used in interpreting the wording in the agreements.

The agreements provide for the transportation of "oil and its products". As has been noted, oil was defined under the *Pipe Lines Act* to mean "any liquid hydrocarbon". Since this was the legislation in place at the time the parties entered into their contractual arrangements, it is reasonable to assume that the meaning used by the parties was the same as that used in the *Pipe Lines Act*. This definition is very broad and if used in place of the term "oil" in the agreement would indicate that IPL had the authority to transport any liquid hydrocarbon, which must include the products which are the subject of this application. Given this definition in the *Pipe Lines Act*, the Board concurs with IPL that it could have relied on the term "oil" alone in the easement agreement, rather than adding the phrase "and its products". While we cannot know what the drafters had in mind when adding this phrase, it could have been to provide further clarity to the landowner grantors who would not necessarily be familiar with certain of the terms in the agreements.

The Board is of the view that the meaning of the term "oil and its products" as defined in the *Pipe Lines Act* is broad enough to include the products which are proposed to be transported on Line 8, and that IPL has the authority to transport the products in this application pursuant to the easement agreements.

However, if the Board has erred in the determination of the application of the *Pipe Lines Act*, then the definition of "oil" in the *National Energy Board Act* could apply to the easement agreements. OPLA has argued that the products to be shipped are neither designated oil products, pursuant to section 130 of the Act nor hydrocarbons under the first part of the definition of oil and therefore do not fall within the definition in the Act and may not be transported pursuant to the easement agreements. Again, the Board has looked at this in terms of two questions: 1) would these products need to be designated under section 130 of the Act; and 2) do these products fall within paragraph (a) of the definition of oil?

The Board does not agree with OPLA with respect to the purpose of section 130 of the Act. The purpose of section 130 is to designate as a hydrocarbon a substance that would not otherwise be a hydrocarbon. Such designation allows the application of the provisions of the Act; for example, the designated substance is subject to the same legislative and regulatory framework as all other products transported by means of an oil or gas pipeline. The two products currently designated under the *Oil Products Designation Regulations*[29] are methanol and methyl tertiary butyl ether. Both result from the processing of natural gas and therefore required designation to be treated as

[29] SOR 88-216, s. 2.

oil. Other products which could be designated under these regulations are, for example, those which result from the processing of coal.

To interpret the provision as OPLA has argued would mean that any hydrocarbon which results from processing or refining would have to be designated before it would be considered oil and could be shipped on any oil pipeline in Canada. Virtually all crude oil is processed in some way, to remove water and sediments and to blend to adjust viscosity. The necessary result of OPLA's interpretation would be that almost all oil currently shipped on the oil pipelines in Canada would have to be designated under section 130, and the definition of oil in paragraph (a) would have little, if any, meaning. This would obviously lead to a result that could not have been intended by Parliament.

In light of the above, the Board is of the view that section 130 was not intended to be used to designate all products which result from the processing or refining of hydrocarbons and, further, that the products proposed to be transported on Line 8 would not have to be designated because they already fall under the definition of "oil". One must then look to paragraph (a) of the definition of oil in the Act to determine whether it is broad enough to include the products proposed to be transported. OPLA's exclusion of refined products from this paragraph seemed to be based on its interpretation of the purpose of section 130. Absent this, the Board can find no argument to suggest that "any hydrocarbon or mixture of hydrocarbons other than gas" is not as broad as it appears. This provision is very expansive, and only excludes those hydrocarbon products which, at standard temperature and pressure[30] are in a gaseous state. The *Interpretation Act*[31] requires that every enactment "be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." In the Board's view, reading the term "hydrocarbon" to be exclusive of refined or processed products does not comply with this requirement, and specifically does not best ensure the attainment of the objects of the *National Energy Board Act.*

The Board is of the view that the products to be transported would fall within the definition of oil in the Act if it is used in the interpretation of the easement agreements. Therefore, the Board concludes that IPL has the authority to transport the products proposed in the application, regardless of whether the agreements are to be construed with regard to the *Pipe Line Act* or the *National Energy Board Act.*

With respect to OPLA's argument that there is a difference in character between the products previously transported and those proposed to be carried, as evidenced by the hazard zones discussed in the risk assessment, the Board agrees that the mix of products in Line 8 will be different after reactivation. However, this argument will be

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[30] The definition of "gas" in the Act is:

"gas" means

(*a*) any hydrocarbon or mixture of hydrocarbons that, at a temperature of 15° C and a pressure of 101.325 kPa, is in a gaseous state, or

(*b*) any substance designated as a gas product by regulations made under section 130 ....

[31] R.S.C. 1985, c. I-21, s.12.

sufficient to render the easement agreement inapplicable only if OPLA can show that change in character is such that the product to be carried is no longer "oil and its products". As discussed in the foregoing, the Board is satisfied that the products to be transported on the reactivated line will fall within the meaning of "oil and its products". Accordingly, the changed character of such products is not sufficient to exclude them from *habendum* clause of the agreement.

Given that the Board finds that the easement agreements are clear, there is no need to look at the subsequent conduct of the parties, or to rule on whether the Board has the authority to do so. As well, the *contra proferentum* rule only takes effect if there is doubt as to the interpretation of the agreements, which in the Board's view does not exist.

The Board does not agree with Mr. Kozowyk's argument that the original agreements did not allow for pipelines to be installed in the future. The easement agreements allow for the laying down, construction and operation (*inter alia*) of *one or more pipe lines*. The agreement states that the rights granted may be exercised and enjoyed from the date of signing "and for so long thereafter as the Grantee desires to exercise the rights and privileges hereby given". There is no limitation on the rights of IPL to lay down and construct one or more pipelines. Rather the agreement explicitly allows these activities to continue. Therefore, a new easement was not required when Line 8 was installed. This view is consistent with the discussions of the British Columbia Court of Appeal in *Hillside Farms*[32].

Compliance with Section 86

The second part of the third issue in the List of Issues is whether the easement agreements comply with section 86 of the Act. The Board has already found that the Act does not apply to these easement agreements. To find otherwise with respect to the easement agreements would make compliance with the law impossible. IPL could not have known, in 1957, prior to the Act becoming law, what would be required by section 86 to be included in an easement agreement. Requiring compliance retroactively removes all certainty, not only from IPL, but from landowners. There is no requirement for the easement agreements signed before the coming into force of section 86 to contain the provisions required by that section. The Board therefore denies OPLA's request to dismiss the application or place a condition on the approval granted to IPL in this regard. Given this, it is not necessary to address OPLA's arguments with respect to the need for inclusion of the items which are the subjects of paragraphs 86(2)(d) and (e) in the Act.

[32] *Supra*, note 11.

4.4 Public Participation in the Hearing

Views of the Board

During the course of the proceeding, the initial discussions between IPL and the interested parties began more than one year prior to the hearing, and the intervenors, especially OPLA, have expended considerable time and effort in preparation for the hearing. OPLA's representatives have demonstrated that landowners can have an effective voice in the Board's hearing process. The Board values the participation of landowners in its proceedings and commends all of the intervenors for their efforts. However, that participation could have been more effective if OPLA and other intervenors had filed evidence in the proceeding.

Chapter 5

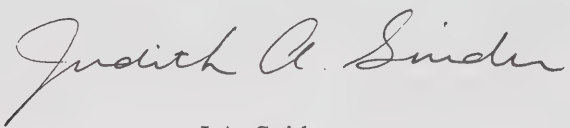
Disposition

The foregoing constitutes our Reasons for Decision in respect of the application heard by the Board in the OH-4-96 proceeding.

The Board has considered the Environmental Screening Report and the comments received on the report and is of the view that, taking into account the implementation of the proposed mitigative measures and the conditions set out in the Screening Report, the construction and installation of the Line 8 OPTS facilities are not likely to cause significant adverse environmental effects. This represents a decision pursuant to paragraph 20(1)(a) of the *Canadian Environmental Assessment Act.*

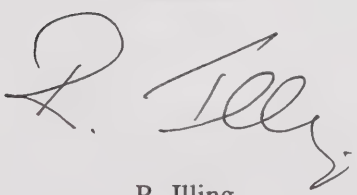
The Board approves IPL's application made pursuant to section 58 of the Act for an Order authorizing the construction of pipeline facilities and the exemption of the facilities from the provisions of sections 30, 31, 33 and 47 of the Act. Accordingly, the Board has issued Order OX-J1-7-97, as shown in Appendix I.

The Board approves IPL's application made pursuant to section 54 of the OPR for the reactivation of a portion of IPL's Line 8.



J.A. Snider
Presiding Member

R. Priddle
Member



R. Illing
Member

Appendix I

Order XO-J1-7-97

ORDER XO-J1-7-97

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the regulations made thereunder; and

IN THE MATTER OF an application, pursuant to section 58 of the Act, by Interprovincial Pipe Line Inc. ("IPL"), filed with the Board under File 3400-J001-78.

B E F O R E the Board on 1 April 1997.

WHEREAS the Board has received an application from IPL dated 15 November 1996, respecting the construction of Line 8 Oil Products Transportation System ("OPTS") facilities, at an estimated cost of $1.47 million;

AND WHEREAS pursuant to the *Canadian Environmental Assessment Act* ("CEAA"), the Board has performed an environmental screening of the proposal and has considered the information submitted by IPL and others;

AND WHEREAS the Board has determined, pursuant to paragraph 20(1)(a) of the CEAA, that taking into account the implementation of IPL's proposed mitigative measures and those set out in the attached conditions, the proposal is not likely to cause significant adverse environmental effects;

AND WHEREAS the Board has examined the application and considers it to be in the public interest to grant relief;

IT IS ORDERED that the construction of the Line 8 Oil Products Transportation System facilities is exempt from the provisions of sections 30, 31, 33 and 47 of the Act, upon the following conditions:

1. Unless the Board otherwise directs, IPL shall implement or cause to be implemented all of the policies, practices, recommendations and procedures for the protection of the environment included in or referred to in its Application, in its undertakings made to other regulatory agencies or as otherwise adduced in evidence through the application process.

2. Unless the Board otherwise directs, for the facilities to be constructed:

   (a) IPL shall provide to the local Ministry of Environment and Energy ("MOEE") District Manager or designate, prior to construction commencing, the name and telephone number of the environmental inspector responsible for construction at the Millgrove Station;

   (b) if blasting is required for any construction of the facilities, IPL shall provide prior notice to local residents and landowners of the blasting time period;

(c) all water wells within 100 m of proposed blasting locations shall be monitored, before and after construction, by IPL for quality and quantity;

(d) IPL shall advise the local MOEE District Manager or designate of all complaints regarding adverse effects on water wells from blasting and the resolution of such complaints upon their resolution;

(e) should construction interfere with any water supplies, IPL shall provide to those parties affected, clear potable water of sufficient quantity or adequate filtration equipment to meet their current household requirements; and

(f) IPL shall file a copy of its current Emergency Response Plan with the Ontario Spills Action Centre of MOEE and shall promptly file from time to time any amendments to such Plan.

3. Unless the Board otherwise directs;

(a) IPL shall cause the approved facilities to be designed, manufactured, located, constructed, and installed in accordance with those specifications, drawings and other information or data set forth in its application, or as otherwise adduced in evidence before the Board, except as varied in accordance with subsection (b) hereof; and

(b) IPL shall cause no variations to be made to the specifications, drawings or other information or data referred to in subsection (a) without the prior approval of the Board.

4. Unless the Board otherwise directs, should there be a requirement to remove excess bedrock by blasting and hoe-ramming during construction at Millgrove Junction:

(a) IPL shall conduct a survey of migratory bird nest sites within 500 m of the work site; and

(b) IPL shall conduct a survey of the location of all water wells within 100 m of the proposed blasting location, and sample the well water for static water level, total coliform, faecal coliform, calcium, magnesium, sodium, iron, hydrogen sulphide, sulphate, conductivity, total dissolved solids, turbidity, colour, total organic compounds, total kjedahl nitrogen, biological oxygen demand, nitrate, nitrite and ammonia before and after construction.

5. Unless the Board otherwise directs, should it be necessary to employ blasting or hoe-ramming during construction at Millgrove Junction, IPL shall not commence construction until after migratory bird nesting has been completed.

6. Unless the Board otherwise directs, IPL shall, pursuant to section 58 of the *Onshore Pipeline Regulations* ("the Regulations"), file with the Board a post-construction environmental report within six months of the date that the leave to open is granted for the proposed facilities. The post-construction environmental report shall set out the environmental issues that have arisen up to the date on which the report is filed and shall:

(a) indicate the issues resolved and those unresolved; and

(b) describe the measures IPL proposes to take in respect of the unresolved issues.

7. Unless the Board otherwise directs, IPL shall, pursuant to section 58 of the Regulations, file with the Board, on or before the 31 December following each of the first two complete growing seasons after the post-construction environment report referred to in condition 6 has been filed, a report containing:

   (a) a list of the environmental issues indicated as unresolved in the previous report and any that have arisen since that report was filed; and

   (b) a description of the measures IPL proposes to take in respect of any unresolved environmental issue.

8. Unless the Board otherwise directs, IPL shall update its Emergency Response Plan to reflect the change in service and new facilities on Line 8 and to subsequently file such revisions with the Board prior to the in-service date of the Line 8 OPTS.

9. Unless the Board otherwise directs, IPL shall demonstrate to the satisfaction of the Board that consultation has occurred with all emergency responders along the Line 8 OPTS.

10. Unless the Board otherwise directs, IPL shall advise all affected municipalities, landowners and other residents who may be living in the identified hazard zones of the proposed Line 8 OPTS of the necessary actions to be taken in the event of a pipeline emergency. IPL is further directed to inform the Board of the results of its communication program, upon its completion.

11. Unless the Board otherwise directs prior to 31 December 1998, this Order shall expire on 31 December 1998 unless the construction and installation with respect to the additional facilities has commenced by that date.

NATIONAL ENERGY BOARD

M. L. Mantha
A/Secretary